

DE 04-197

UNITIL ENERGY SYSTEMS, INC.

Petition for Approval of One-Year Extension of Transition and Default Service for G1 Customers and Approval of Solicitation Process

Order Approving Petition

ORDER NO. 24,420

January 7, 2005

Appearances: Gary A. Epler, Esq. for Unitil Energy Systems, Inc.; Office of the Consumer Advocate by F. Anne Ross, Esq., on behalf of residential ratepayers; Gerald Eaton, Esq. for Public Service Company of New Hampshire; James Rodier, Esq. for Freedom Energy Partners, LLC; and Suzanne Amidon, Esq. for the Commission Staff

I. PROCEDURAL BACKGROUND

On October 26, 2004, Unitil Energy Systems, Inc. (Unitil) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Approval of a One-Year Extension of Transition and Default Service for G1 Customers and Approval of Solicitation Process. Included with the Petition were the supporting testimony and related attachments of David K. Foote, who holds various senior positions with Unitil and its affiliated companies, and Karen M. Asbury, Director of Regulatory Services for Unitil Service Corp. By its Petition, Unitil is seeking to extend the time period for its provision of Transition Service (TS) and Default Service (DS) to its G1 customers from its current scheduled end date of April 30, 2005, to April 30, 2006. In addition, Unitil is seeking approval of the process by which it plans to solicit supplies to provide those services during the extended one-year time period.

On October 28, 2004, the Office of Consumer Advocate (OCA) notified the Commission it would be participating on behalf of residential ratepayers consistent with RSA 363:28. On November 9, 2004, the Commission issued an Order of Notice scheduling a

Prehearing Conference for November 23, 2004, and establishing November 19, 2004 as the deadline for filing Petitions to Intervene. On November 17, 2004, the Commission received a Petition to Intervene from Freedom Partners, LLC. On November 19, 2004, the Commission received a Petition to Intervene from Public Service Company of New Hampshire (PSNH).

On November 23, 2004, the Commission issued a secretarial letter establishing a procedural schedule, ordering Unitil's responses to data requests on December 3, 2004, and scheduling a hearing date for December 15, 2004. On December 7, 2004, the Commission received Unitil's Motion for Confidentiality with respect to Staff's data requests 1 and 2.

On December 13, 2004, the Commission received a letter from Constellation New Energy, Inc. and Constellation Energy Commodities Group, Inc. expressing their support for Unitil's Petition. On December 17, 2004, the Commission received a letter from Freedom Energy Partners, LLC clarifying its intervention in the proceeding. The hearing on the merits was held as scheduled on December 15, 2004. At the hearing, Unitil withdrew its request for confidential treatment of the response to Staff data request 2.

II. POSITIONS OF THE PARTIES

A. Unitil

Unitil stated that its provision of TS and DS to its G1 (commercial and industrial) customers will end April 30, 2005, pursuant to the terms of a Settlement Agreement approved by the Commission in Docket No. DE 01-247 (NHPUC Order No. 24,046) (August 28, 2002). The Settlement Agreement required Unitil to file, by November 1, 2004, a report on the status of the competitive markets for G1 customers, and a recommendation regarding the continuation of service after April 30, 2005. Unitil represented that it submitted its Petition in compliance with

those requirements. Unitil testified that the report on the status of competitive markets for G1 customers, included as Schedule DKF-1, indicated that a fully functional competitive supply market, which could be expected to serve the G1 customers, had not yet materialized. Unitil stated that to continue to serve the G1 customers, it developed a proposal to extend the provisions of TS and DS for one year, so that these services end at the same time as TS to Unitil's residential customers ends, i.e., on April 30, 2006.

Unitil's Petition requests Commission approval for Unitil to solicit supplies for the extension of service to its G1 customers. Unitil proposes to supply TS and DS through semi-annual solicitations for each of the two six-month periods commencing on May 1, 2005 and on November 1, 2005. For the purposes of retail pricing only, Unitil asks the Commission to approve the subdivision of its G1 customers into two groups: those who have an average metered monthly 15-minute peak kilovolt-ampere (kVA) demand of equal to or greater than 1,000 kVA (Large G1 Customers), and those whose average metered monthly peak kVA demand for the same period is less than 1,000 kVA (Small G1 Customers). At hearing, Unitil testified that, under those definitions, approximately 14 customers representing approximately 39% of the annual G1 customer load would be considered Large G1 Customers and the remainder would be considered Small G1 Customers.

In its Petition, Unitil proposes to offer monthly retail pricing to Large G1 Customers based on the monthly variable wholesale price (the "G1 Variable Charge"). Unitil testified that based on its experience in Massachusetts, competitive suppliers are mostly interested in Large G1 Customers and that from a wholesale supply standpoint, it made sense for those customers to pay on a monthly pricing basis. Small G1 Customers would receive energy at

a fixed retail rate (the “G1 Fixed Charge”) based on the weighted average of monthly bid prices across the six-month period, with variable monthly pricing as an option. A Small G1 Customer electing to receive the G1 Variable Charge would be required to make the election at the start of the respective six-month period and could not switch back to the G1 Fixed Charge until the end of the six-month period.

Unitil testified that it chose a six-month period to coincide with the expiration of the current power supply contract on April 30, 2005. Unitil further testified that one of the reasons it chose to bid the supply in two six-month contracts was the recent activity in the New England wholesale market related to the establishment of Locational Installed Capacity (LICAP) charges.¹ According to Unitil, LICAP could result in a significant financial obligation, and the second Request for Proposal (RFP) would cover a period of time when LICAP is expected to be in place. Unitil testified that the second RFP could be revised to accommodate developments in the LICAP regulatory framework.

Unitil submitted a draft RFP and a draft Power Supply Agreement (Supply Agreement) with its Petition. Unitil also filed copies of the proposed form of its TS and DS tariffs for which it is seeking Commission approval. Unitil stated that, in order to respond to market changes as they may develop, the RFP and the Supply Agreement may need to be amended. Unitil committed, however, to provide the Commission a red-lined copy of the revisions, including a justification of such revisions to the Commission but did not necessarily agree that the changes required Commission approval. Unitil did state that, depending on the

¹ The Federal Energy Regulatory Commission has ordered ISO-NE to implement LICAP by January 1, 2006. *Devon Power LLC, et al.* Docket No. ER03-563-038. Order on Rehearing and Clarification (Nov. 8, 2004).

importance of the change, for example, if Unitil were to assume the LICAP obligation, a further proceeding at the Commission may be warranted.

Along with its proposed tariff pages, Unitil submitted a sample calculation of rates using the methodology it requested the Commission to approve. Ex. 1, Schedules KMA-1, 2 and 3. Unitil testified that changes to the tariff were required to provide for the one-year extension of TS and DS, to subdivide the G1 rate class for retail pricing purposes and to prevent any gaming to make sure all customers pay their share of the costs. Unitil explained that the tariffs included three provisions to prevent gaming as detailed below.

First, Unitil stated that all Small G1 Customers will automatically be placed on the fixed six month charge. Unitil testified that Small G1 Customers would have the option of taking the variable monthly charge provided that they chose that option before the start of the six month period. Second, under the proposed tariff, if a Small G1 Customer switched to a competitive supplier before the six month period is over, Unitil would automatically recalculate that customer's bill using the monthly variable charge. Third, if a Small G1 Customer served by a competitive supplier chose to come back to DS in the middle of the six month period, that customer would be required to pay the variable monthly charge. Unitil testified that these three provisions would assure that each customer paid the costs for its service.

Unitil stated that it held customer education meetings with its G1 customer groups on December 7, 2004, and December 14, 2004. According to Unitil, it presented its customers with an explanation of what it had filed with the Commission and also took the opportunity to have presentations made by three companies involved in providing retail service in other

jurisdictions. Until testified that it offered customers an understanding of current market conditions to make sure that customers were aware of the supply options.

Until described the solicitation process and submitted a draft copy of the RFP which contained the criteria it intends to apply to the review of any bids received. Ex. 1, Schedule DKF-2. Until testified that it intends to provide market notification of the RFP by announcing its availability electronically to all participants in NEPOOL and, in particular, to the members of the NEPOOL Markets Committee. Until stated that the draft RFP, although subject to change, describes in sufficient detail its G1 TS and DS requirements, the related customer-switching rules, and the form of power service sought.

Until requested that the Commission approve the process by which Until would seek approval of the rates for its G1 customers. Until avers that it will have the burden to show that it has followed the solicitation process approved by the Commission, that Until's analysis of the bids submitted is reasonable and that the rationale for its choice of supplier is reasonable. According to Until, if it can meet this burden, the Commission should deem the resulting rates as market based. Until proposed that, under this scenario, the Commission would have five business days from the time Until files the proposed rates with supporting documents to review and rule on the rates. Until testified that its request applied to the solicitation process for the power Supply Agreement for the six-month period beginning May 1, 2005, and ending October 31, 2005, and the period beginning November 1, 2005, and ending April 30, 2006.

In summary, Until is seeking the following approvals: 1) A one year extension of TS and DS for G1 customers from May 1, 2005 through April 30, 2006; 2) the solicitation of supplies for the extension of G1 TS and DS through two semi-annual solicitations for six month

supply periods commencing on May 1, 2005, and November 1, 2005; 3) for the purpose of retail pricing only, the division of the G1 class into two subgroups, as discussed above; 4) the pricing of TS and DS supply for Large G1 at monthly variable prices, and to Small G1 customers at fixed average prices, with an option for Small G1 to receive monthly variable pricing; 5) approval of the proposed form of tariff sheets; 6) approval of the solicitation process; 7) approval of the solicitation schedules; and 8) approval of the process for the review and approval of rates which result from the solicitation process.

B. Office of Consumer Advocate

The Office of Consumer Advocate (OCA) did not take a position on Unitil's petition.

C. Freedom Energy Partners, LLC

Freedom Energy Partners, LLC. filed a letter with the Commission on December 17, 2004, stating that it had been able to obtain satisfactory clarifications from Unitil and accordingly had no objection to the Commission's approval of the Petition.

D. Public Service Company of New Hampshire

Public Service Company of New Hampshire did not take a position on the Petition.

E. Commission Staff

Commission Staff (Staff) did not object to Unitil's Petition but, during the hearing, raised questions about some of the details of Unitil's proposal. Specifically, Staff inquired whether Unitil believed that, by approving the solicitation process, the Commission still would have the right to review the resulting rates. Staff also sought details regarding the

standards for reviewing the creditworthiness of potential suppliers and Unitil's contingency plans in the event that the solicitation process did not result in market-based rates or in the event of a supplier bankruptcy. Finally, Staff sought and received assurance that Unitil understood that the Commission could deny cost recovery in retail rates if the expenses under the contracts were not prudently incurred or may, in the determination of the Commission, not be required to be paid. Staff recommended that the Commission consider including language to that effect in its order in this proceeding.

III. COMMISSION ANALYSIS

We first address Unitil's Motion for Confidentiality regarding responses to Staff Data Request 1. In its Motion, Unitil states that the answer to Staff Data Request 1, which inquired about contingencies in the event of a supplier bankruptcy, represented a confidential and proprietary discussion of Unitil's analysis of the risk it may face should its energy supplier declare bankruptcy. We note that the written response to Staff Data Request 1 was not introduced in the record at the December 15, 2004 hearing.

The New Hampshire Right to Know Law provides each citizen the right to inspect all public records in the possession of the Commission. RSA 91-A:4, I. RSA 91-A:5,IV however, exempts from disclosure certain "confidential, commercial or financial information". In order to rule on the Motion, we have made an *in camera* review of Data Response 1 which, as Unitil asserts, is a description of the steps Unitil has taken and would take in the event of a supplier that was heading into financial difficulties. The Data Response does not contain financial terms and conditions but does detail Unitil's contingency planning, which is commercially sensitive in a competitive environment.

In balancing the interests for and against public disclosure contained in Data Response 1, we are persuaded that the information is commercially sensitive, disclosure of which would constitute an invasion of Unitil's privacy to perform a competitive function. We do not find the public's interest in full review sufficient to warrant disclosure. *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). We will, therefore, afford the response protective treatment. We do not grant the Motion as worded however. The Motion suggests that if a document is not introduced into the record or formally docketed with the Commission, but parties and Staff agree to abide by a non-disclosure agreement, a Commission order is not required. We disagree. We do not distinguish, for Right to Know purposes, between documents that are submitted into the record and documents that are housed in the offices of Commission staff, such as during discovery. We consider all documents to be "public records", available for inspection, unless protected.

Consistent with our practice, the protective treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

Unitil did testify during the hearing about possible contingencies in the event of bankruptcy, without requesting confidential treatment over that information. The testimony was a general reference to the issues that were detailed in Data Response 1. Of course, because there was no specific protection requested during testimony, information in the transcript is considered open to the public, even if particular words also appear in Data Response 1 which has been accorded protective treatment.

As to the substantive requests made by Unitil, the Settlement Agreement approved in Docket No. DE 01-247 contemplated the potential extension of TS and DS service to G1 customers now sought. In its petition, Unitil, among other things, contends that “the competitive retail market for electricity in New Hampshire has not sufficiently developed to a point where [TS and DS service] is no longer necessary.” Petition, p. 5. Unitil also asserts that extension would “allow for the continued provision of TS & DS supply service from Unitil to [G1] customers until a comprehensive plan for providing Default Service to all of Unitil’s customers is in place.” Petition, p.3. We find persuasive Unitil’s contention that “a retail supplier market has not yet materialized to serve G1 customers.” Foote Testimony, p. 5. Accordingly, in order to assure the availability of service at just and reasonable rates, we find the request for extension to be reasonable and in the public interest.

Unitil also requested that TS and DS service to G1 customers be segmented to distinguish between large customers (1,000 kVa or greater demand) and small customers (less than 1,000 kVa demand). In his testimony, Mr. Foote asserts that the segmentation recognizes that experience in Massachusetts “suggests that market opportunities may exist for customers with demands above 1,000 kVa.” Foote testimony, p.12. We find that the segmentation by size reasonably balances concerns about the undeveloped nature of competitive retail markets with the goal of fostering competition where appropriate. Accordingly, the rate design proposed by Unitil is reasonable and in the public interest.

Finally, Unitil asks that the solicitation process for the one-year extension be structured to allow for two separate RFPs for six-month periods. It contends that the separate RFPs will serve to “balance the desire to provide G1 customers with information concerning

their energy prices with a need to minimize the market premium which may be added to secure supply for G1 customers for a longer period.” Foote Testimony, p. 7. We find that the solicitation process generally is consistent with processes that the Commission has approved in the past and we find also that the specific proposal to employ two RFPs for the extension reasonably addresses the goals of sending useful price signals to customers while seeking to avoid locking in rates that may include too high a premium.

While we approve the solicitation process, the Commission indicated in DE 01-247, Unitil’s Restructuring Docket, it is possible that in the future certain costs incurred in connection with the Supply Agreement may not be recoverable in retail rates, “depending on, among other things, our judgment about whether they would be required to be paid under the Agreement, or are prudently incurred by Unitil in performing the Agreement, or would have been avoidable by Unitil through prudent action.” Order No. 24,139 (March 14, 2003). Consequently, when Unitil presents its Supply Agreement and the accompanying rates, we will review the rates pursuant to RSA 363:17-a. Finally, as part of our approval of Unitil’s petition, we will require redlined copies of Unitil’s Supply Agreement highlighting any changes made to the version submitted on October 26, 2004.

Based upon the foregoing, it is hereby

ORDERED, that Unitil’s petition for a one year extension, from May 1, 2005 through April 30, 2006, of Transition Service and Default Service for G1 customers is **APPROVED**; and it is

FURTHER ORDERED, that Unitil’s proposal to solicit G1 Transition Service and Default Service supplies through two semi-annual solicitations for six-month supply periods

commencing May 1, 2005 and November 1, 2005 is APPROVED; and it is

FURTHER ORDERED, that for the purpose of retail pricing only, Until may subdivide the G1 class into two subgroups as discussed above; and it is

FURTHER ORDERED, that Until's motion for confidential treatment with respect to Staff data request 1 is GRANTED; and it is

FURTHER ORDERED, that the determination as to protective treatment made herein is subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant; and it is

FURTHER ORDERED, that Until's petition to price Transition Service and Default Service supply for Large G1 customers at monthly variable prices and to Small G1 customers at fixed average prices, with an option for Small G1 customers to elect monthly variable pricing, is APPROVED; and it is

FURTHER ORDERED, that the proposed tariff pages are suspended and the Petitioner shall file revised tariff pages following the solicitation reflecting the rates resulting from the solicitation process; and it is

FURTHER ORDERED, that the solicitation process is APPROVED subject to the qualifications discussed in this order; and it is

FURTHER ORDERED, that the solicitation schedules set forth in the Company's petition are APPROVED; and it is

FURTHER ORDERED, that the process for review and approval of the results of the solicitation process is APPROVED subject to the qualifications discussed in this order;

and it is

FURTHER ORDERED, that all Petitions for Intervention are GRANTED.

By order of the Public Utilities Commission of New Hampshire this seventh day
of January, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary